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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of

OP LLC

Request for a Limited Extension or Waiver of
the Section 27.14 Substantial Service Deadline
for the 1670-1675 MHz Band

File No. _____

To: The Wireless Telecommunications Bureau

**REQUEST FOR A LIMITED EXTENSION OR WAIVER OF THE SECTION 27.14
SUBSTANTIAL SERVICE DEADLINE FOR THE 1670-1675 MHZ BAND**

Monica Gambino
Robert Millar
Blake Hawk
Crown Castle International Corp
2000 Corporate Drive
Canonsburg, PA 15317
(724) 416-2516

Samuel L. Feder
John L. Flynn
David M. Didion
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, D.C. 20001
(202) 639-6000

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OP LLC, an indirect subsidiary of Crown Castle International Corp. (NYSE: CCI) (“Crown Castle”),¹ respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) grant a three-year extension of the October 1, 2013 deadline for compliance with the 1670-1675 MHz band (“Spectrum”) substantial service requirement (“Service Requirement”) or, in the alternative, that the Commission grant a temporary waiver of the Service Requirement. As discussed below, the Spectrum is leased to an affiliate of LightSquared under a long-term *de facto* transfer lease to be used as part of LightSquared’s terrestrial network, and the Commission’s actions effectively have halted LightSquared’s plans until GPS interference issues are resolved. Temporary relief of the Service Requirement for the Spectrum would promote the Commission’s goal of deployment of advanced broadband services and avoid investment in stop-gap measures during this period of uncertainty.²

I. Introduction and Summary.

Crown Castle is one of the country’s largest independent owners and operators of shared wireless infrastructure. It owns, operates, and leases communications structures, including approximately 23,800 towers and 10,000³ distributed antenna system (“DAS”) nodes, providing significant coverage in 91 of the top 100 US markets. Crown Castle’s wholly owned indirect subsidiary, OP LLC, is the licensee of the Spectrum, a nationwide 5 MHz block at 1670 MHz

¹ This petition will generally refer to OP LLC, Crown Castle International Corp. and/or other Crown Castle subsidiaries as “Crown Castle” for ease of reference.

² Although *de facto* spectrum lessees are primarily responsible for complying with Commission rules in general, 47 C.F.R. § 1.9030(c), buildout requirements remain the responsibility of the licensee, 47 C.F.R. § 1.9030(d)(5). The Commission has made clear that “if the licensee anticipates that it may fail to meet its buildout obligations, it may request an extension of the deadline for meeting those obligations by seeking to show, under the specific factual showing required under our existing policies and rules relating to extension.” *In re Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17,503, 17,570 ¶ 146 n.347 (2004).

³ This number includes both active DAS nodes and those currently under construction.

designated by the call sign WPYQ831. Under the Commission's rules, Crown Castle must demonstrate that it is providing "substantial service" with respect to this license by October 1, 2013.⁴

Crown Castle has been working to deploy advanced services in the Spectrum since it obtained its license in 2003. After initially investing tens of millions of dollars in a mobile video service, Crown Castle turned to leasing the Spectrum when that planned venture proved uneconomic. In 2007, Crown Castle entered into a long-term *de facto* transfer lease of the Spectrum to a predecessor of the advanced communications venture known as LightSquared.⁵ LightSquared is a wireless innovator with plans to build a nationwide state-of-the-art open wireless broadband network with integrated satellite and 4G LTE terrestrial components. Crown Castle decided to enter into the lease because doing so facilitated the efficient use of the Spectrum, especially in light of the overwhelming customer demand for mobile data services. LightSquared has proposed using the Spectrum in lieu of a portion of its own L-band holdings in building out its nationwide broadband network.⁶

Although LightSquared remains committed to deploying its advanced wireless network,⁷ regulatory uncertainty has arrested further development for the time being.⁸ Due to concerns

⁴ See 47 C.F.R. § 27.14(a).

⁵ The lease is now held by LightSquared's affiliate One Dot Six Corp. See generally *Master Agreement by and among Crown Castle MM Holding LLC, OP LLC, and TVCC One Six Holdings LLC Dated July 16, 2007*, ULS File No. 0003108073 (filed July 17, 2007) (Lease ID L000002305, now L000007295).

⁶ See *LightSquared Subsidiary LLC*, Response to Question 43: Description of Proposed Modification, Attachment, IBFS File no. SAT-MOD-20120928-00160 (filed Sept. 28, 2012). See also LightSquared's Notice of Ex Parte Presentation, IB Docket No. 11-109, at 5-8 (filed May 17, 2012).

⁷ See LightSquared's Notice of Ex Parte Presentation, IB Docket No. 11-109, at 1 (filed July 24, 2012); see also LightSquared's Notice of Ex Parte Communication and Request for Action, IB Docket Nos. 08-184, 11-109, ET Docket No. 10-142, IBFS File No. SAT-MOD-20101118-

over the possibility of interference to certain GPS receivers from LightSquared's planned terrestrial operations, the Commission effectively halted LightSquared's network deployment earlier this year, pending its decision on the appropriate resolution of this matter.⁹ The Commission has asked for public comment on whether it should eliminate or modify LightSquared's authorization to use its L-band spectrum to provide terrestrial service.¹⁰ LightSquared has also filed a petition for declaratory ruling, arguing that the GPS community does not have a legal basis for stopping LightSquared's plans.¹¹ LightSquared has suggested a range of solutions—from implementing technical fixes¹² to procuring alternative spectrum—to address issues of co-existence with GPS receivers.¹³ Most recently, it petitioned the Commission for access to additional spectrum and new rules for some of its existing spectrum, and has proposed to surrender the right to use terrestrially the spectrum nearest to the GPS band.¹⁴ In the meantime, LightSquared filed for bankruptcy on May 14, 2012,¹⁵ and has

00239, at 5 (Sept. 24, 2012) (“LightSquared remains committed to fulfilling the Commission’s vision of providing competitive wireless broadband to all Americans.”).

⁸ See, e.g., *International Bureau Invites Comment on NTIA Letter Regarding LightSquared Conditional Waiver*, Public Notice, IB Docket No. 11-109, 27 FCC Rcd 1596 (IB rel. Feb. 15, 2012).

⁹ See *id.* at 1598-99; see also, e.g., Comments of U.S. GPS Industry Council on SkyTerra Modification Application, SAT-MOD-20090429-00047 (July 10, 2009); Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Julius Genachowski, Chairman, Federal Communications Commission (Jan. 12, 2011).

¹⁰ See *International Bureau Invites Comment*, 27 FCC Rcd at 1599.

¹¹ See LightSquared Petition for Declaratory Ruling, IB Docket No. 11-109 (Dec. 20, 2011).

¹² See LightSquared Press Release, *LightSquared Remains Committed to Finding Resolution* (Feb. 14, 2012), <http://m.lightsquared.com/press-room/press-releases/lightsquared-remains-committed-to-finding-resolution/> (last visited Sept. 21, 2012).

¹³ See Katherine Burton & Saijel Kishan, *Falcone Said to Be Seeking Spectrum Swap to Salvage LightSquared*, BLOOMBERG (Feb. 16, 2012, 12:00 AM), <http://www.bloomberg.com/news/2012-02-16/falcone-said-to-be-seeking-spectrum-swap-to-salvage-lightsquared.html> (last visited Sept. 21, 2012).

¹⁴ See *LightSquared Subsidiary LLC, Petition for Rulemaking to Revise the Commission’s Technical Rules*, Petition for Rulemaking, RM-_____, at 4-5 (filed Sept. 28, 2012); see also

obtained additional financing and is working toward a reorganization and exit.¹⁶ The Commission's International Bureau Chief has indicated that the Commission is "continuing to consider all options for addressing" the GPS interference issue.¹⁷ In light of this regulatory uncertainty, LightSquared recently asked the Commission to confirm that LightSquared is no longer required to comply with the construction milestones for its own L-band licenses.¹⁸

In these unusual circumstances, the Commission should grant a limited extension or temporary waiver of the Service Requirement deadline. Until the Commission resolves the issue of whether and how LightSquared can move forward with deploying its terrestrial network, neither LightSquared nor Crown Castle will be able to efficiently deploy broadband or other advanced services in the Spectrum. The Commission therefore can and should grant relief from the pending buildout requirement.

First, the regulatory uncertainty surrounding LightSquared's plans temporarily prevents effective deployment in the Spectrum. The Commission has repeatedly granted relief from buildout requirements when legitimate regulatory uncertainty has made network deployment either impossible or inefficient. That is unquestionably the case here.

Second, lack of equipment currently prevents either party from efficiently meeting the Service Requirement for the Spectrum next year. Equipment that can be used in conjunction

Response to Question 43: Description of Proposed Modification, Attachment, IBFS File no. SAT-MOD-20120928-00160 (filed Sept. 28, 2012).

¹⁵ *In re LightSquared Inc., et al.*, Case No. 12-12080 (Bankr. S.D.N.Y. May 14, 2012).

¹⁶ See LightSquared's Notice of Ex Parte Presentation, IB Docket No. 11-109, at 1 (filed July 24, 2012).

¹⁷ Brendan Sasso, *FCC considering 'all options' to save bankrupt tech company LightSquared*, THE HILL (May 19, 2012, 12:30 PM), <http://thehill.com/blogs/hillicon-valley/technology/228439-fcc-considering-all-options-to-save-bankrupt-lightsquared> (last visited Sept. 21, 2012).

¹⁸ See LightSquared's Notice of Ex Parte Communication and Request for Action, IB Docket Nos. 08-184, 11-109, ET Docket No. 10-142, IBFS File No. SAT-MOD-20101118-00239, at 3-5 (Sept. 24, 2012) ("*LightSquared Milestone Extension Letter*").

with the Spectrum and LightSquared's L-band frequencies cannot economically be developed until the Commission resolves how the L-band can be used and the technical rules for providing service in the band. The Commission has many times recognized that parties cannot effectively meet buildout schedules in light of this type of equipment scarcity.

Third, if the Commission does not grant relief, LightSquared and Crown Castle will be forced to invest considerable time and money in a temporary, stop-gap system designed to meet the Service Requirement but unable to provide the advanced services customers desire. This system would almost certainly be completely replaced when the Commission resolves the question of whether and how LightSquared's terrestrial system can move forward. As the Commission has previously concluded, a buildout extension is warranted to avoid this kind of stop-gap investment of resources.

Finally, if the Commission would prefer to use its waiver authority rather than grant an extension, the requirements for waiver are met here. A waiver would promote the Commission's important goal of promoting the deployment of mobile broadband services¹⁹ far better than would construction of a limited temporary network. As discussed below, grant of a waiver is thus in the public interest.

Under either extension or waiver, Crown Castle respectfully requests a three-year delay of the current deadline. This will allow all interested parties to respond to any Commission decision on the LightSquared matter and deploy service in the Spectrum in the most productive way possible.

II. The Commission Should Grant an Extension of the Service Requirement.

The Commission enjoys broad authority and ample discretion to extend construction requirements. The Commission may extend a construction deadline "if the licensee shows that

¹⁹ Connecting America: The National Broadband Plan at 9-10 (rel. Mar. 16, 2010).

failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.”²⁰ Commission precedent supports an extension under this provision where regulatory uncertainty or equipment scarcity make deployment infeasible, or a licensee would need to deploy a network inefficiently to meet a milestone in the absence of an extension. All of these circumstances are present here.

A. Regulatory Uncertainty Beyond Crown Castle’s Control Impedes Its Ability to Meet the Current Service Requirement Deadline.

The Commission and the Wireless Telecommunications Bureau (“Bureau”) have repeatedly recognized that where regulatory uncertainty thwarts a rational buildout plan, a buildout extension should be granted. In 2006, for example, a coalition of Wireless Communications Service (“WCS”) licensees requested a three-year construction deadline extension due to regulatory uncertainty about the rules governing the operation of Satellite Digital Audio Radio Service (“SDARS”) terrestrial repeaters in an adjacent band.²¹ At the time, the Commission had not settled on rules governing potential interference in those adjacent bands, and the WCS licensees successfully argued that this uncertainty hindered equipment development, network design, and facility deployment.²² The Bureau agreed that the uncertain regulatory limitations played an important role in the “unique circumstances of the band”²³ and granted the licensees three additional years due to these “causes beyond [their] control.”²⁴

Similarly, the Bureau extended the relevant construction deadline when M-LMS licensees became mired in the uncertainty of a pending rulemaking that examined potential new

²⁰ 47 C.F.R. § 1.946(e)(1).

²¹ See *In re Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses*, Order, 21 FCC Rcd 14,134, 14,136-37 ¶ 5 (WTB 2006) (“*WCS Coalition*”).

²² *Id.* at 14,137 ¶ 6.

²³ *Id.* at 14,139 ¶ 10.

²⁴ *Id.* at 14,139, 14,141 ¶¶ 9, 13.

approaches to facilitate more efficient use of the band.²⁵ It noted that regulatory uncertainty “is a factor warranting a further extension of time” particularly amid a pending proceeding which may revisit and potentially revise applicable rules.²⁶ Suspension of the construction deadline, it explained, “will allow the Commission to evaluate the performance requirements and service rules consistent with prior Commission actions suspending a deadline while relevant policy is subject to the pending rulemaking proceedings.”²⁷

This case fits squarely within this line of decisions.²⁸ Like the WCS licensees, LightSquared is awaiting a Commission decision on potential interference between bands. In the meantime, the Spectrum cannot be effectively deployed, hostage to the same uncertainty that hampered the WCS licensees six years ago. And like the M-LMS licensees, possible revisions to relevant rules or spectrum assignments makes investing in network deployment currently

²⁵ See *In re Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules*, Order, 23 FCC Rcd 17,250, 17,257-58 ¶ 23 (WTB 2008).

²⁶ *Id.*

²⁷ *In re Amendment of Parts 1, 21, 73, 74, and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 18 FCC Rcd 6722, 6805 ¶ 200 (2003) (“In light of the breadth of the proposals set forth in this *NPRM & MO&O*, and our re-evaluation of performance standards for the 2500 - 2690 MHz band, we believe that suspending the current August 16, 2003 construction deadline for BTA authorization holders is in the public interest. While we are normally reluctant to suspend a build-out requirement, a suspension of this construction deadline will allow the Commission to evaluate the performance requirements and service rules for this band. This approach is consistent with prior Commission actions suspending a deadline while relevant policy is subject to the pending rulemaking proceedings.”).

²⁸ See also *In re Requests by Interactive Video and Data Service Lottery Winners to Waive the March 28, 1997 Construction Deadline*, Order, 12 FCC Rcd 3181, 3183 ¶ 5 (WTB 1997) (granting an extension because the fact that a rulemaking was pending “is inextricably tied to these licensees’ construction requirements and the mechanisms used to satisfy those benchmarks”); *In re Requests by Interactive Video and Data Service Auction Winners to Waive the January 18, 1998, and February 28, 1998, Construction Deadlines*, Order, 13 FCC Rcd 756, 758 ¶ 7 (WTB 1998) (granting a further extension and reasoning that “our approach here is consistent with prior Commission actions suspending a deadline while relevant policy is subject to pending rulemaking proceedings”).

inefficient and contrary to the public interest. The Commission should provide the same kind of relief here.

It is true that all communications ventures face some regulatory uncertainty, and thus the Commission has made clear that the relevant question is whether the uncertainty is “beyond that typically faced by Commission regulatees.”²⁹ There can be no question that this standard is met here. A multi-billion dollar venture has run into an unanticipated regulatory concern that the Commission and interested parties are working hard to overcome. The resolution is likely to take some time and could take any number of forms, including technical fixes in the current spectrum or a plan involving alternative spectrum, and is further complicated by a Chapter 11 case precipitated by the regulatory issues themselves. And certainly no one suggests that Crown Castle could have reasonably foreseen or controlled an outcome that caught many by surprise. Indeed, at the time Crown Castle entered into the lease with LightSquared, the Commission had granted LightSquared authority to build its network, and no one had raised significant concerns about co-existence with GPS receivers that had not already been fully addressed in final Commission orders.³⁰ An extension is therefore fully consistent with Commission precedent.

²⁹ *In re MariTEL, Inc.*, Memorandum Report and Order, 22 FCC Rcd 14,074, 14,087-88, 14,085 ¶¶ 24, 19 (2007) (“[T]he Commission has, on occasion, granted waiver relief due to regulatory uncertainty attributable to the pendency of a Notice of Proposed Rule Making.”).

³⁰ See *The LightSquared Network: An Investigation of the FCC’s Role Before the H. Energy and Commerce Comm.*, 112th Cong. 2-3 (2012) (Joint written statement of Julius P. Knapp, Chief, FCC Office of Engineering and Technology, and Mindel De La Torre, Chief, FCC International Bureau) (“During the decade preceding the November 2010 waiver request, the GPS industry had numerous opportunities—detailed below—to inform the Commission of the receiver overload interference issue . . . [d]espite participating in multiple proceedings, and raising *other* interference issues that were ultimately resolved to the GPS industry’s satisfaction, it did not do so.”).

B. Lack of Equipment Also Impedes Meeting the Service Requirement on the Current Schedule.

The ability to meet next year's deadline is also hampered by a lack of suitable equipment. A number of critical advanced LTE technologies and technical specifications must be developed in order to make productive use of the Spectrum as part of the LightSquared venture. As of early 2012, the development of these technologies and specifications is still pending—and with good reason.³¹ It is currently unclear how the L-band can be used and what the technical parameters of the band will be. Equipment that can be used in the L-band and the Spectrum cannot be timely developed and deployed in these circumstances, when regulatory changes could render a massive investment in network infrastructure obsolete, including thousands of base stations throughout the country.

The Commission and the Bureau have consistently extended construction deadlines in analogous circumstances. For example, the Bureau extended the 220 MHz construction deadline to allow time for the use of next-generation digital technology in the band.³² The Bureau reasoned that “[a] three-year extension of the construction deadline is warranted because it will

³¹ See 3GPP, *3GPP active work programme*, available at <http://www.3gpp.org/ftp/Specs/html-info/FeatureOrStudyItemFile-550017.htm> (last visited Sept. 3, 2012).

³² *In re Request of Warren C. Havens for Waiver or Extension of the Five-year Construction Requirement for 220 MHz Service Phase II Economic Area and Regional Licensees*, Memorandum Opinion and Order, 19 FCC Rcd 12,994 (WTB 2004) (“*Havens*”); see also *In re FCI 900, Inc. Expedited Request for 3-Year Extension of 900 MHz Band Construction Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 11,072, 11,079-80 ¶¶ 11-12 (2001) (“*FCI 900*”) (extending the construction deadline for all 900 MHz SMR licensees, noting a “near-term lack of digital 900 MHz voice equipment” and finding that “additional time to deploy digital equipment will serve the public interest by enhancing competition among 900 MHz licensees and between 900 MHz licensees and other digital CMRS providers”); *In re American Wireless, L.L.C.*, Memorandum Opinion and Order, 15 FCC Rcd 11,025, 11,027 ¶ 7 (WTB 2000).

provide the equipment market time to develop the next-generation digital technology that may allow for viable commercial operation of voice or data networks in this band.”³³

Other Commission decisions have also recognized that it is in the public interest to await an upcoming transition to next generation technology before requiring the enormous injection of capital required for a proper nationwide network buildout.³⁴ The Commission has also recognized that the current unavailability of equipment is typically a circumstance beyond the licensee’s control.³⁵

Similar issues are present here. Crown Castle had no responsibility for the complex, ongoing standards and equipment development efforts by third-party equipment vendors or the efforts to address GPS interference concerns. Nor should it have, given its reasonable, Commission-approved decision to lease the Spectrum to LightSquared through a long-term *de facto* transfer lease.³⁶ Crown Castle therefore asks the Commission to extend its Service Requirement deadline so that LightSquared or Crown Castle may continue to work with vendors

³³ *Havens*, 19 FCC Rcd at 13,001 ¶ 16.

³⁴ *Id.*; see also, e.g., *FCI 900*, 16 FCC Rcd at 11,076 ¶ 6 (“[A]n extension will serve the public interest because it will allow the introduction of innovative digital 900 MHz voice services, thus benefiting consumers and promoting competition”); *id.* at 11,078 ¶ 9 (“We find that subscribers would incur inconvenience and expense if they must acquire and subsequently change out obsolete analog handsets.”).

³⁵ See, e.g., *Havens*, 19 FCC Rcd at 13,001 ¶ 15 (“[W]e do not believe it is reasonable to fault licensees who obtained licenses and then faced an unexpected loss of equipment”); *In re Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeks Waivers of Section 101.1011 of the Commission’s Rules and Extensions of Time to Construct and Demonstrate Substantial Service*, Memorandum Opinion and Order, 23 FCC Rcd 5894, 5905 ¶ 24 (WTB 2008) (“We find that the LMDS licensees before us have demonstrated that they faced factors beyond their control, including difficulties in obtaining viable, affordable equipment . . .”).

³⁶ *Cf.* 47 C.F.R. § 1.9030(b) (in a long-term *de facto* lease, “the licensee is relieved of primary and direct responsibility for ensuring that the spectrum lessee’s operations comply with the Communications Act and Commission policies and rules.”).

on the development of standards and equipment to enable the efficient deployment of advanced wireless services in the Spectrum.

C. Denial of an Extension Would Require An Inefficient Stop-Gap Deployment.

Additionally, the Commission should grant the requested extension for a very practical reason: If the Commission does not grant the requested relief, Crown Castle will be forced to invest in a nominal “stop-gap” network to avoid losing its license.

The Commission and the Bureau have repeatedly recognized that avoiding this type of inefficient buildout warrants granting an extension. For example, in granting the extension to the WCS Coalition discussed above, the Bureau reasoned that “the public interest would be ill-served by compelling WCS licensees to devote their resources to the construction of stop-gap, legacy systems merely to meet the . . . construction deadline.”³⁷ Similarly, in FCI900, the Commission granted an extension relying on almost precisely the same reasoning (and language), holding that “the public interest would be ill served by compelling 900 MHz MTA licensees to devote scarce resources to the construction of stopgap legacy systems in order to meet the five-year construction deadline.”³⁸

These principles are equally applicable here. Crown Castle does not realistically face the loss of its license without an extension. Rather, it confronts the possible necessity of an inefficient stop-gap buildout that no one wants. Forcing LightSquared—which would likely be

³⁷ *WCS Coalition*, 21 FCC Rcd at 14,141 ¶ 12; see also *Longhorn Communications Inc., Attn Dean S. Kozel*, Letter, 26 FCC Rcd 6716, 6720 (WTB 2011) (noting that “stop-gap construction of a nonviable system merely to meet construction obligations is not in the public interest”); *In re Extension of the Five-Year Build-Out Period for BTA Authorization Holders in the Multipoint Distribution Service*, Memorandum Opinion and Order, 16 FCC Rcd 12,593, 12,596-97 ¶ 8 (MMB 2001) (“LMDs”); *Requests by Interactive Video and Data Service Lottery Winners to Waive the March 28, 1997 Construction Deadline*, 12 FCC Rcd at 3184 ¶ 6; *Requests by Interactive Video And Data Service Auction Winners to Waive the January 18, 1998, and February 28, 1998, Construction Deadlines*, 13 FCC Rcd at 756 ¶ 7.

³⁸ *FCI 900*, 16 FCC Rcd at 11,078 ¶ 9.

hampered from unproductive spending while its bankruptcy is pending—or even Crown Castle to make uneconomic choices about service deployment would be clearly contrary to the public interest. Unreasonably strict enforcement in this case would mean that no one wins, least of all the public.

This situation stands in stark contrast to those in which the Commission has not approved extensions, such as those involving delays caused by decisions to pursue business plans for which there was insufficient demand,³⁹ lack of financing,⁴⁰ or reasonably foreseeable regulatory delays.⁴¹ Crown Castle made the economically rational and spectrally efficient decision to lease the Spectrum to a venture that the Commission has found would bring substantial potential public interest benefits. LightSquared possesses the financing to continue to lease the Spectrum and Crown Castle supports this arrangement. The parties also possess the financing to meet the milestone if necessary, though doing so would be to no one's benefit in light of the unprecedented regulatory uncertainty currently surrounding the LightSquared venture.

³⁹ See, e.g., *Thomas A. Seaman, Receiver for Vitech Corporation*, Order, 22 FCC Rcd 1916, 1918 ¶ 6 (WTB-Mobility Division 2007) (“It is well established that failed business decisions do not qualify as grounds for relief of our regulatory requirements...”) citing *In re Globalstar, L.P.*, Memorandum Opinion and Order, 18 FCC Rcd 1249, 1252 ¶¶ 7-8 (IB 2003) (business decisions based on economic considerations, like lower than expected subscriber levels and the MSS business generally, are not circumstances outside the control of the licensee and do not warrant an extension).

⁴⁰ *Thomas A. Seaman*, 22 FCC Rcd at 1918 ¶ 6; see also *Communications Specialists of Wilmington, Attn. S. Frank McNeil*, Letter, 27 FCC Rcd 7638, 7640 (WTB Jul. 11, 2012) (Not providing services because it “was not economically feasible” is “a reason expressly rejected by Commission rule as a basis for obtaining an extension”).

⁴¹ *In re Metropolitan Area Networks, Inc.*, Order on Reconsideration and Memorandum Opinion and Order, 27 FCC Rcd 3826, 3831 ¶ 11 (WTB 2012) (Under circumstances where it was “reasonably foreseeable that administrative, judicial or Congressional developments could delay the implementation of final rules for TV white space devices . . . by obtaining these licenses before the rules for TV white space devices were finalized, MAN made a voluntary business decision”).

In short, Crown Castle asks that the Commission grant it a limited three-year extension to maximize efficient deployment options in the near future. Such a reprieve would avoid penalizing Crown Castle for these unique circumstances beyond its control, and give the Commission more time to resolve the uncertainty that currently impedes advanced L-band deployment.

III. Alternatively, the Commission Should Temporarily Waive the Service Requirement.

In the alternative, Crown Castle asks the Commission to temporarily waive the Service Requirement. The Commission may grant a waiver, pursuant to Section 1.925, if the petitioner establishes either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest, or (2) because of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁴² The Commission will waive its rules where the particular facts make strict compliance inconsistent with the public interest.⁴³ The Commission may specifically consider whether, as in this case, the special circumstances demand a waiver for *more effective implementation* of overall policy.⁴⁴

The Commission and the Bureau have recognized that a waiver of construction requirements is appropriate when strict enforcement would not effectively further the Commission's policy goals. For example, in 2008, the Bureau's *FiberTower* decision granted deadline extensions where licensees had the potential to help rapidly and robustly deploy

⁴² 47 C.F.R. § 1.925(b).

⁴³ *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

⁴⁴ See *WAIT Radio*, 418 F.2d at 1159.

additional wireless services (in that case, as a backhaul solution) in the then-near future.⁴⁵ Those licensees argued that their 39 GHz band had the potential to serve as a backhaul solution for, and encourage the deployment of advanced services of, licensees in the 700 MHz band, Advanced Wireless Services, and other bands.⁴⁶ The Bureau agreed that the public interest demanded it grant the licensees more time to construct their licenses and coordinate buildout with other services to maximize the joint deployment of advanced wireless.⁴⁷ It found that strictly enforcing the Service Requirement “would not serve the rule’s underlying purpose, as it would tend to slow, rather than accelerate, service deployment.”⁴⁸

Deployment of a mobile broadband service using the Spectrum promises similar public benefits. As the Commission has observed, mobile broadband is “poised to be a primary driver of innovation in the U.S. economy over the next decade,” propelled by the momentum of mobile voice adoption and fixed broadband deployment.⁴⁹ Indeed, it found that these twin trends “have driven innovation and economic growth in the United States over the past two decades.”⁵⁰ Meanwhile, mobile data usage has exploded, driven by the proliferation of smartphones and tablets, while large parts of the country remain underserved by mobile broadband service providers.⁵¹

⁴⁵ *In re ART Licensing Corporation Requests for Waiver, Extension of Time to Meet Coverage Requirements, and Extension of License Period*, Order on Reconsideration and Memorandum Opinion and Order, 23 FCC Rcd 14,116, 14,125-26 ¶ 20 (WTB 2008) (“*FiberTower*”).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 14,126 ¶ 21.

⁴⁹ *In re SkyTerra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer of Control of SkyTerra Subsidiary, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 3059, 3085-86 ¶ 57 (IB & WTB 2010).

⁵⁰ *Id.*

⁵¹ *Id.* at 3086-87 ¶ 60.

The Commission has recognized that LightSquared’s planned operations promise a critical solution at a critical time. When the Commission approved the transaction that formed LightSquared, it found that the proposal “promise[d] the possibility of providing several public interest benefits.”⁵² These included “additional broadband capacity at a time when—as the National Broadband Plan noted—the nation is increasing its use of such services exponentially,” helping “enhance competition among current mobile wireless providers,” acting as a “catalyst for market-changing developments” and innovative consumer devices, and providing “mobile wireless broadband service to those areas that are currently unable to receive it.”⁵³ The Commission made similar determinations when it granted the waiver allowing LightSquared increased flexibility in providing terrestrial service, noting, for example, that “LightSquared’s network will enhance competition for terrestrial mobile wireless broadband services, giving consumers additional options when choosing a broadband service provider.”⁵⁴ And in its recent milestone extension request, LightSquared detailed the billions of dollars it has raised and invested in the last two years alone to support this vision.⁵⁵

Crown Castle stands ready to support LightSquared’s efforts to realize the promise of its competitive network by making the Spectrum available for use in it. But a reasonable amount of additional time will be necessary to resolve the current uncertainty surrounding the venture. Refusing to defer the Service Requirement in the meantime would simply force a nominal contingency buildout that is in no one’s interest. This, in turn, would undercut the possible

⁵² *Id.* at 3087 ¶ 62.

⁵³ *Id.*

⁵⁴ *In re LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, 26 FCC Rcd 566, 582-83 ¶ 34 (IB 2012).

⁵⁵ *See also* LightSquared’s Notice of Ex Parte Communication and Request for Action, IB Docket Nos. 08-184, 11-109, ET Docket No. 10-142, IBFS File No. SAT-MOD-20101118-00239 at 2 (Sept. 24, 2012).

promise of the LightSquared venture by squandering resources and temporarily redeploying the Spectrum.

Consequently, as in the recent *FiberTower* case, a waiver of the construction requirement would serve the Commission's broader policy goals, and hence the public interest.⁵⁶ By preserving the ability to deploy the Spectrum in a larger context endorsed by the Commission—here, L-band broadband—the Commission can ensure that the Spectrum is put to its most productive use. If an alternative use is ultimately necessary, Crown Castle will make sure that it satisfies the FCC's requirements in a productive manner. Thus, the Commission should waive the Service Requirement for three years under the public interest standard of Section 1.925.

⁵⁶ *FiberTower*, 23 FCC Rcd at 14,125-27 ¶¶ 20-21.

CONCLUSION

The Commission should extend or temporarily waive the Service Requirement deadline until October 1, 2016. Any failure to meet the Section 27.14(a) Service Requirement deadline would be due to circumstances outside Crown Castle's control, including regulatory uncertainty and equipment development schedules. Strictly imposing that deadline is contrary to the public interest because it would force a stop-gap buildout and inhibit the ability to deploy the Spectrum in a superior manner. Indeed, strict application would subvert the rule's very purpose, hindering instead of aiding advanced and efficient wireless deployment. The requested relief will give the Commission time to settle its analysis of LightSquared and allow Crown Castle to pursue efficient deployment of advanced wireless services no matter the outcome.

Respectfully submitted,

Monica Gambino
Robert Millar
Blake Hawk
Crown Castle International Corp
2000 Corporate Drive
Canonsburg, PA 15317
(724) 416-2516

/s/ Samuel L. Feder
Samuel L. Feder
John L. Flynn
David M. Didion
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, D.C. 20001
(202) 639-6000

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